

## Overview of a Tribe's TAS Eligibility for the CWA Water Quality Standards Program

This document briefly describes the significance of a federally recognized Indian tribe's (tribe or tribal) application for the U.S. Environmental Protection Agency's approval to be treated in the same manner as a state (TAS) under Section 518(e) of the Clean Water Act (CWA) for purposes of water quality standards (WQS) and certification programs. The CWA authorizes TAS for a tribe that meets the requirements set forth in CWA Section 518(e) and 40 CFR 131.8, which include a showing that the tribe has adequate authority over the reservation waters covered by the application. Before making a decision on an application, EPA provides notice to appropriate governmental entities, as well as other interested stakeholders, as to the substance and basis of the tribe's assertions regarding its authority.

When EPA approves a tribe's TAS application the tribe becomes *eligible* to seek federal approval of its WQS. WQS consist of designated uses for water bodies, water quality criteria to protect those uses, and an antidegradation policy consistent with 40 CFR 131.12. A tribe's WQS would establish water quality goals for specific water bodies and serve as the regulatory basis for establishing water quality-based treatment controls and strategies. To obtain federal approval of its standards, a tribe must develop proposed standards, make them available for public comment, hold a public hearing regarding those proposed standards, and submit them to EPA for approval. Upon EPA approval, tribal WQS would apply to the reservation waters covered by the tribal TAS application. However, under the CWA, standards do not impose any direct enforceable requirements on any party, unless and until they are incorporated into a permit or used as the basis for some other regulatory decision.

WQS are an important step in protecting water quality. Such protection benefits everyone, including tribal members and nonmembers (including property owners), by helping ensure that waters are fishable and swimmable.

In addition, when EPA determines a tribe is eligible for TAS for purposes of WQS, the tribe is likewise eligible for and (once it designates a certifying agency, *see* 40 CFR 121.1(e)) assumes authority for issuing water quality certifications under CWA Section 401 for the reservation waters covered by the approval (*see* 40 CFR 131.4(c)). Under CWA Section 401, a federal entity cannot issue a permit or license to discharge into waters of the United States unless the relevant state or eligible tribe certifies that the discharge will comply with applicable water quality requirements, including WQS, or waives such certification. EPA retains authority for issuing water quality certifications within Indian country where a tribe has not been approved as eligible for TAS for WQS and water quality certifications. EPA regulations at 40 CFR part 121 address issuance of water quality certifications.

TAS approval for WQS does not give a tribe authority to administer the National Pollutant Discharge Elimination System or any other federal permitting program. Federal approval for issuing permits would require a separate TAS approval.

**Attachment D**

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